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5 UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7 OAKLAND DIVISION
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9 CALIFORNIANS FOR DISABILITY
10 RIGHTS, INC. ("CDR"), CALIFORNIA
11 COUNCIL OF THE BLIND ("CCB"), BEN
ROCKWELL, AND DMITRI BELSER, on
behalf of all others similarly situated,

12 Plaintiffs,

13 vs.

14 CALIFORNIA DEPARTMENT OF
15 TRANSPORTATION ("CALTRANS") and
WILL KEMPTON, in his official capacity,

16 Defendants.
17

Case No: C 06-5125 SBA

**ORDER DENYING DEFENDANTS'
MOTION ON PLAINTIFFS' LEGAL
CLAIMS TO SURVEY FACILITIES**

Docket 405

18 **I. INTRODUCTION**

19 This is a certified class action brought by persons with mobility and vision impairments
20 who allege that they have been denied access to sidewalks, cross-walks, pedestrian underpasses
21 and other public rights of way in violation of Title II of the Americans with Disabilities Act
22 (ADA) and Section 504 of the Rehabilitation Act of 1973. According to Defendants, among
23 the relief being sought by Plaintiffs is that Caltrans conduct a survey of its facilities to
24 determine whether they are ADA-compliant. At the September 1, 2009, pretrial conference,
25 Defendants argued that such relief is legally unavailable, and that this particular matter could
26 be resolved by way of motion practice. See 9/1/09 Reporter's Transcript (RT) 42:25-43:7.
27 Based on that representation, the Court granted Defendants leave to file a motion to present
28 legal authority on this specific issue, and permitted Plaintiffs to file a response.

1 Although the instant motion was to focus solely on the discrete issue of surveys,
2 Defendants have instead used their motion as an opportunity to challenge the substantive merit of
3 all of Plaintiffs' claims, revisit previously-resolved issues and repeat their complaints about
4 Plaintiffs' alleged discovery misconduct that were discussed at the pretrial conference. The Court
5 did not authorize briefing on those matters, nor did Defendants seek leave of Court to address
6 them. Therefore, the only issue properly before the Court in this motion and which the Court will
7 consider is the question of whether a requirement that Defendants survey their facilities to ensure
8 compliance with federal disabilities laws is an available remedy. All other matters raised in
9 Defendants' motion are stricken and will not be considered.

10 **II. DISCUSSION**

11 Defendants first contend that there is "no mention" of any survey requirement in the
12 ADA regulations. Defs.' Mot. at 6. That argument misses the point. Plaintiffs are not
13 claiming that Defendants are in violation of the ADA by having failed to conduct a survey.
14 Rather, the issue is whether the Court may impose a requirement that Defendants survey
15 certain of their facilities in the event the Court finds that they have employed a policy and/or
16 practice that violates the ADA.¹

17 Defendants next argue that the Court has no power to impose statewide relief in
18 response to "limited examples of discrimination," and that the "only" locations at issue are the
19 41 sites disclosed by Plaintiffs' expert, Peter Margen. Defs.' Mot. at 8:25-9:2. In support of
20 their argument, Defendants cite Horn v. Flores, 129 S.Ct. 2579 (2009) where English
21 Language-Learner (ELL) students in the Nogales Valley School District (Nogales) and their
22 parents filed a class action lawsuit, alleging that the State of Arizona was violating the Equal
23

24 ¹ Defendants' recitation of what they purportedly will be ordered to survey is inaccurate.
25 For example, Defendants complain in their motion that "Plaintiffs are demanding that this Court
26 order Caltrans to survey all highway shoulders throughout the state to determine if they are used by
27 pedestrians...." Defs.' Mot. at 10. Yet, at the pretrial conference, Plaintiffs clearly stated that they
28 were not seeking such relief and that the only change they are requesting is a modification of
Caltrans' policy in DIB 82-03. RT 94:8-9, 22-23. Defendants then acknowledged this clarification
and expressed "that's a relief for us." RT 94:19. Nevertheless, Defendants devote an entire section
of their motion to an issue that they understood has already been resolved. See Defs.' Mot. at
10:14-12:9.

1 Educational Opportunities Act (EEOA) by failing to take appropriate action to overcome
2 language barriers. The district court granted declaratory relief in favor of the plaintiffs and
3 issued a series of injunctions extending relief on a statewide basis. The Supreme Court held
4 that it was error for the district court to issue a statewide injunction because there was no
5 evidence or findings made that any school district other than Nogales had failed to comply with
6 the EEOA. Id. at 2606.

7 Unlike Horn, Plaintiffs are not alleging that Defendants violated the ADA with respect
8 to pedestrian facilities in a localized geographical area. Rather, as the Court has recognized in
9 its prior orders, Plaintiffs are alleging that Defendants violated the ADA by employing policies
10 and engaging in a practice that fails to ensure that sidewalks, cross-walks and similar
11 pedestrian facilities are accessible to individuals with vision and mobility impairments. The 41
12 sites studied by Plaintiffs' expert are offered not only to exemplify the shortcomings of
13 Defendants' practices, but also to provide statistical support for Plaintiffs' claim of systemic
14 violations of the ADA. See Pls.' Opp'n at 5-6. To the extent that Plaintiffs are able to prove
15 their case, Ninth Circuit law supports the conclusion that this Court has the power to provide
16 relief on a system-wide basis. See Armstrong v. Davis, 275 F.3d 849, 869 (9th Cir. 2001)
17 ("[s]ystem-wide relief is required if the injury is the result of violations of a statute or the
18 constitution that are attributable to policies or practices pervading the whole system ... or if the
19 unlawful policies or practices affect such a broad range of plaintiffs that an overhaul of the
20 system is the only feasible manner in which to address the class's injury.").

21 In sum, Defendants have failed to persuade the Court that a remedy that includes a
22 requirement that they survey certain of their facilities to ensure compliance with the ADA is
23 legally unavailable. Ultimately, whether such relief is appropriate will be dependent upon the
24 nature and scope of the ADA violation, if proven. See Stormans, Inc. v. Selecky, 571 F.3d
25 960, 990 (9th Cir. 2009) ("Injunctive relief ... must be tailored to remedy the specific harm
26 alleged.") (citation omitted); United States v. Odessa Union Warehouse Co-op, 833 F.2d 172,
27 175 (9th Cir. 1987) ("The essence of equity jurisdiction is the power of the court to fashion a
28 remedy depending upon the necessities of the particular case.").


1 **III. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT Defendants' Motion on Plaintiffs' Legal Claims to
4 Survey Facilities is DENIED.

5 IT IS SO ORDERED.

6 Dated: September 14, 2009

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8 SAUNDRA BROWN ARMSTRONG
9 United States District Judge
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